

United States
Circuit Court of Appeals
for the Ninth Circuit

HARRY V. SOANES,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
FRANK O. BELL,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
LUTHER E. GIBSON,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
VALLEJO BUS COMPANY (a dissolved Cali-
fornia Corporation),
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

Upon Petitions to Review Decisions of The Tax Court
of the United States

No. 11941

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

For Petitioner:

LEON DE FREMERY, Esq.,
CLARENCE E. MUSTO, Esq.

For Respondent:

THOS. M. MATHER, Esq.

Docket No. 11046

VALLEJO BUS COMPANY (a dissolved
California corporation),

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1946

May 27—Petition received and filed. Taxpayer notified. Fee paid.

Jun. 3—Copy of petition served on General Counsel.

May 31—Request for hearing at San Francisco, filed by taxpayer. 6/5/46 Granted.

July 3—Answer filed by General Counsel.

July 12—Notice issued placing Proceeding on San Francisco calendar. Service of answer made.

1947

Mar. 28—Hearing set May 26, 1947, at San Francisco, California.

May 26—Hearing had before Judge Johnson on merits. Oral motion of petitioner to con-

1947

solidate with 11043, 11044 and 11045—
Motion granted. Stipulation of facts filed.
Petitioner's brief 6/25/47. Respondent's
brief 7/25/47. Petitioner's reply brief
8/14/47.

Jun. 16—Transcript of hearing 5/26/47 filed.

Jun. 23—Brief filed by taxpayer. Copy served.

July 24—Reply brief filed by General Counsel.
Copy served.

Aug. 11—Reply brief filed by taxpayer. 8/12/47
Copy served.

1948

Jan. 23—Opinion rendered, Judge Johnson. De-
cision will be entered for the respondent.
Copy served.

Jan. 27—Decision entered. Judge Johnson. Div. 5.

Apr. 26—Petition for review by U. S. Circuit
Court of Appeals, 9th Circuit, filed by
taxpayer.

Apr. 26—Statement of points relied upon filed by
taxpayer.

Apr. 27—Notice of filing petition for review and
proof of service thereon filed.

Apr. 27—Acknowledgment of service of statement
of points filed by General Counsel.

May 4—Designation of record filed by taxpayer.

May 6—Agreed designation of contents of record
filed by taxpayer with proof of service
thereon. [4*]

*Page numbering appearing at foot of page of original certified
Transcript of Record.

The Tax Court of the United States

Docket No. 11046

THE VALLEJO BUS COMPANY (a dissolved
California corporation),

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above named petitioner hereby petitions for a redetermination of the deficiencies for the calendar year 1942 set forth by the Commissioner of Internal Revenue in his notice of deficiency (San Francisco-IRA: 90D-RR (C:TS: PD-SF: WGW)) dated March 5, 1946, and as a basis of its proceeding alleges as follows:

1. Petitioner was a California corporation but was duly dissolved under the laws of the State of California on December 31, 1942, and this petition is filed and prosecuted in the name and on behalf of said corporation by the officers and directors thereof at the time of its dissolution. The principal office of said petitioner is 316 Napa Street, Vallejo, California. The return for the period here involved was filed with the Collector of Internal Revenue for the First District of California. [52]

2. The notice of deficiencies (a copy of which is attached hereto and marked "Exhibit A") was mailed to petitioner on March 5, 1946.

3. The taxes in controversy are income tax, declared value excess profits tax, and excess profits tax for the calendar year 1942 and in the amount of \$30,452.44.

4. The determination of tax set forth in said notice of deficiencies is based upon the following error:

(a) The Commissioner erred in including as taxable income of petitioner the revenue of certain bus lines during the period from June 1, 1942 to September 15, 1942.

5. The facts upon which petitioner relies as the basis of this proceeding are as follows:

(a) Petitioner was incorporated under the laws of the State of California on July 3, 1936. Petitioner's principal business was the operation of certain bus lines in the City of Vallejo, California, and adjoining territory, and petitioner continued to operate said lines until the sale thereof hereinafter set forth.

(b) On May 19, 1942, petitioner's three stockholders as co-partners, doing business under the firm name and style of Vallejo Bus Co., offered to purchase from petitioner the operative rights of the corporation and all its assets, except four Reo buses, for the sum of \$29,937.20. At a special meeting of the Board of Directors of petitioner held [53] on that day this offer was accepted, the sale and transfer to become effective as of June 1, 1942, subject to the approval of the Railroad Commis-

sion of the State of California. At the same time the officers of the corporation were authorized to execute and deliver the necessary documents.

(c) Said partnership took over the operation of the business on or about June 4, 1942, but prior thereto and on June 1, 1942, said partnership opened a bank account in the name of Vallejo Bus Co., a partnership, and all receipts and revenues from the operation of the business, including those received on and after June 1, 1942, were deposited in said bank account.

(d) On June 9, 1942, petitioner filed a petition with the Railroad Commission of the State of California requesting the Commission to approve the sale and transfer aforesaid.

(e) On September 15, 1942, the Railroad Commission issued its order granting the application of petitioner and authorizing the transfer of the properties described in the agreement, said transfer to take place on or before December 31, 1942.

(f) The Commissioner erroneously added to petitioner's taxable income for the calendar year 1942 the sum of \$35,550.17, alleged to be the revenue from the aforesaid [54] bus lines for the period from June 1, 1942 to September 15, 1942.

Wherefore, petitioner prays that this Court may hear this proceeding and determine that there is an overassessment of income tax for the calendar year 1942 in the amount of \$2.03, that there is no

deficiency in declared value excess profits tax and that the deficiency in excess profits tax does not exceed the sum of \$344.26.

/s/ LEON DE FREMERY,
/s/ CLARENCE E. MUSTO,
Counsel for Petitioner. [55]

State of California,
County of Solano—ss.

Frank O. Bell, being duly sworn, says that he was Secretary and a Director of petitioner above named on the date of its dissolution and as such is duly authorized to verify the foregoing petition on behalf of said dissolved corporation; that he has read the foregoing petition, or had the same read to him, and is familiar with the statements contained therein, that the statements contained therein are true, except those stated to be upon information and belief, and those he believes to be true.

FRANK O. BELL

Subscribed and sworn to before me this 24th day of May, 1946.

(Seal) GEORGE C. DEMMON,
Notary Public. [56]

EXHIBIT "A"

Treasury Department
Internal Revenue Service
74 New Montgomery Street
San Francisco 5, California

Mar. 5, 1946

Office of Internal Revenue Agent in Charge
San Francisco Division
IRA:90-D-RR
(C:TS:PD
SF:WGW)

The Vallejo Bus Company
316 Napa Street
Vallejo, California

Gentlemen:

You are advised that the determination of your declared value excess-profits tax liability for the taxable year ended December 31, 1942 discloses a deficiency of \$3,074.94 and that the determination of your excess profits tax liability for the taxable year ended December 31, 1942, discloses a deficiency of \$27,721.76 and that the determination of your income tax liability for the taxable year ended December 31, 1942, discloses an overassessment of \$2.03 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, San Francisco 5, California, for the attention of Conference Section. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

JOSEPH D. NUNAN, JR.,
Commissioner.

By /s/ F. M. HARLESS,
Internal Revenue Agent in Charge.

Enclosures: Statement, Form of Waiver, Claim Form 843. [57]

STATEMENT

San Francisco
IRA :90-D-RR
(C:TS:PD
SF:WGW)

The Vallejo Bus Company
316 Napa Street
Vallejo, California

Tax Liability for the Taxable Year Ended December 31, 1942
Over-

	Liability	Assessed	assessment	Deficiency
Income Tax	\$ 1,543.27	\$ 1,545.30	\$2.03	
Declared value excess profits tax	3,074.94	0.00		\$ 3,074.94
Excess profits tax	44,732.63	17,010.87		27,721.76

In making this determination of your tax liability, careful consideration has been given to your protest received October 19, 1944, and to the statements made at the conference held on November 17, 1944, and May 9, 1945.

The overassessment shown herein will be made the subject of a certificate of overassessment which will reach you in due course through the office of the collector of internal revenue for your district, and will be applied by that official in accordance with section 322(a) of the Internal Revenue Code, provided that you fully protect yourself against the running of the statute of limitations with respect to the apparent overassessment referred to in this letter, by filing with the collector of internal revenue for your district, a claim for refund on form 843, a copy of which is enclosed, the basis of which may be as set forth herein.

A copy of this letter and statement has been mailed to your representative, Mr. Leon de Fremery, 11th Floor, Crocker Building, San Francisco 4, California, in accordance with the authority contained in the power of attorney executed by you and on file in this office. [58]

ADJUSTMENTS TO NET INCOME

Net income for declared value excess-profits tax computation as disclosed by return.....	\$24,994.65
Unallowable deductions and additional income:	
(a) Income not reported	\$35,550.17
(b) Capital stock tax	375.00
	<hr/>
Net income for declared value excess-profits tax computation as adjusted	\$60,919.82

EXPLANATION OF ADJUSTMENTS

(a) You contend that on or about June 1, 1942, you made a transfer of nearly all of your properties and a transfer of your operative rights, created by decisions of the Railroad Commission of the State of California, to a partnership composed of per-

sons who were also your shareholders, and that the earnings from said properties from said date are not taxable to you. It is held that the transfer was not effective until the Railroad Commission authorized the transfer in its order dated September 15, 1942, and as a consequence the earnings from said properties up to September 15, 1942, are includible in your income. Accordingly, the income as reported by you is increased in the amount of \$35,550.17.

Net income to August 31, 1942.....	\$55,603.01
Net income September 1, 1942, to September 15, 1942	4,941.81
Total	<u>\$60,544.82</u>
Amount reported on the return.....	24,994.65
Additional income	<u>\$35,550.17</u>

(b) Deduction of \$375.00 for capital stock tax paid during the taxable year is disallowed. The tax was paid on your capital stock tax return for the capital stock tax year ended June 30, 1942, which tax accrued on July 1, 1941. The capital stock tax is, therefore, not a proper accrual for the year 1942.

(c) In the computation of income tax, credit for income subject to excess profits tax is allowed in the amount of \$51,758.71 in lieu of the amount of \$18,900.97 shown on the return. [59]

COMPUTATION OF DECLARED VALUE EXCESS-PROFITS TAX

Net income for declared value excess-profits tax computation	\$60,919.82
Less:	
10 percent of \$300,999.00, value of capital stock as declared in your capital stock tax return for the year ended June 30, 1942.....	<u>30,099.90</u>
Balance subject to declared value excess-profits tax....	\$30,819.92
Less:	
5 percent of declared value of capital stock.....	<u>15,049.95</u>
Balance	<u>\$15,769.97</u>
Amount taxable at 6.6 percent \$15,049.95, and tax.....	\$ 993.30
Balance taxable at 13.2 percent \$15,769.97, and tax....	<u>2,081.64</u>
Total declared value excess-profits tax assessable.....	\$ 3,074.94
Declared value excess-profits tax assessed:	
Original, Account No. 66848—First California District	<u>0.00</u>
Deficiency of declared value excess-profits tax.....	\$ 3,074.94

COMPUTATION OF INCOME TAX

Net income for declared value excess-profits tax computation	\$60,919.82
Less: Declared value excess-profits tax.....	3,074.94
Net income for capital stock tax purposes.....	\$57,844.88
Less: (c) Income subject to excess profits tax.....	51,758.71
Normal-tax net income	<u>\$ 6,086.17</u>

NORMAL TAX COMPUTATION

Normal-tax net income.....	\$6,086.17	
Tax at 15 percent on.....	\$5,000.00	\$ 750.00
Tax at 17 percent on.....	1,086.17	184.65
Total normal tax.....		<u>\$ 934.65</u>

SURTAX COMPUTATION

Surtax net income	\$6,086.17	
Surtax at 10 percent on \$6,086.17.....		608.62
Total income tax assessable.....		<u>\$ 1,543.27</u>

Income tax assessed:

Original, Account No. 66848—First California District	1,545.30
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Overassessment of income tax.....	<u>\$ 2.03</u>
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ADJUSTMENTS TO EXCESS PROFITS NET INCOME AS
COMPUTED UNDER THE INVESTED CAPITAL
CREDIT METHOD

Excess profits net income as disclosed by return.....	\$25,140.63
Additions: (a) Increase in net income.....	35,925.17
Total	<u>\$61,065.80</u>
Deductions: (b) Declared value excess-profits tax.....	3,074.94
Excess profits net income as revised.....	<u>\$57,990.86</u>

EXPLANATION OF ADJUSTMENTS

(a) The increase in net income is explained in the foregoing and consists of the following items:

Income not reported	\$35,550.17
Capital stock tax disallowed.....	375.00
Total	<u>\$35,925.17</u>

(b) Excess profits net income is reduced by declared value excess-profits tax of \$3,074.94 as determined herein.

ADJUSTMENTS TO EXCESS PROFITS CREDIT BASED
ON INVESTED CAPITAL

	As disclosed by return (Deductions)	Corrected
INVESTED CAPITAL		
Equity invested capital beginning of year	\$12,675.17 (a) (\$93.85)	\$12,581.32
Add: 50 percent of average borrowed capital	2,820.55	2,820.55
	<u>15,495.72</u>	<u>15,401.87</u>
Invested capital		
Excess Profits Credit—8%	1,239.66	1,232.15

EXPLANATION OF ADJUSTMENTS

(a) Accumulated earnings and profits as of January 1, 1942, are decreased by \$93.85, due to the following adjustments:

Decrease—capital stock tax accrued in 1941.....	\$187.50
Increase—overstatement of accrual of 1941 taxes:	
Income tax	\$28.03
Excess profits tax	65.62
	<u>93.65</u>
Net decrease	<u>\$93.85</u>

[62]

COMPUTATION OF EXCESS PROFITS TAX

Excess profits net income.....	\$57,990.86
Less:	
Specific exemption	\$5,000.00
Excess profits credit	1,232.15
	<u>6,232.15</u>
Adjusted excess profits net income.....	<u>\$51,758.71</u>
90 percent thereof	<u>\$46,582.84</u>

Surtax net income (computed without regard to credit provided by section 26(e))....	\$57,844.88
80 percent thereof	\$46,275.90
Less:	
Income tax under Chapter I (other than section 102) for the taxable year.....	1,543.27
Balance	\$44,732.63
Excess profits tax:	
Above balance, or 90 percent of adjusted excess profits net income, whichever is the lesser amount.....	\$44,732.63
Excess profits tax assessable.....	\$44,732.63
Excess profits tax assessed:	
Original, April 1943 list, Account No. 400306—First California District	17,010.87
Deficiency of excess profits tax.....	\$27,721.76

POST-WAR REFUND OF EXCESS PROFITS TAX AND
CREDIT FOR DEBT RETIREMENT

	Return	Corrected
Excess profits tax	\$17,010.87	\$44,732.63
Credit allowable under sections 780 and 781	1,701.09	4,473.26
Net reduction in indebtedness under section 783—none claimed		
Credit for debt retirement allowable.....	0.00	0.00
Net post-war refund credit.....	\$ 1,701.09	\$ 4,473.26

[Endorsed]: Filed May 27, 1946. [63]

[Title of Tax Court and Cause.]

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the

above-named petitioner admits, denies and alleges as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the petition.

3. Admits the taxes in controversy are declared value excess profits taxes and excess profits taxes for the calendar year 1942, and alleges the amount to be \$30,796.70, but denies the remaining allegations contained in paragraph 3 of the petition.

4 and 4(a). Denies that the Commissioner erred in the determination of the deficiencies as alleged in paragraph 4 and subparagraph (a) thereunder.

5(a). Admits the allegations contained in subparagraph (a) of paragraph 5 of the petition; alleges the petitioner was an active, operating public utility under the jurisdiction of the California State Railroad Commission and held a certificate of necessity issued by that body dated May 6, 1941.

5(b). Admits the allegations contained in the first sentence of subparagraph (b) of paragraph 5 of the petition, but denies the remaining allegations contained in said subparagraph.

5(c). Denies the allegations contained in subparagraph (c) of paragraph 5 of the petition.

5(d). Admits that on June 9, 1942, petitioner filed a petition with the Railroad Commission of the State of California requesting the Commission to approve a sale and transfer of its assets; denies the remaining allegations contained in subparagraph (d) of paragraph 5 of the petition

5(e). Admits the allegations contained in sub-

paragraph (e) of paragraph 5 of the petition.

5(f). Denies the allegations contained in subparagraph (f) of paragraph 5 of the petition.

6. Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified or denied. [65]

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioner's appeal denied.

/s/ J. P. WENCHEL, TMM
Of Counsel:

B. H. NEBLETT,
Division Counsel;

T. H. MATHER,
Special Attorney, Bureau of Internal Revenue.

[Endorsed]: Filed July 3, 1946. [66]

[Title of Tax Court and Cause.]

STIPULATION

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys, that the following facts shall be taken as true upon the trial of the above-entitled case, provided, however, that this stipulation shall be without prejudice to the right of either party to introduce other and further evidence not inconsistent with the facts herein stipulated to be taken as true.

1. Petitioner was incorporated under the laws

of the State of California on July 3, 1936. Petitioner's principal business was the operation of certain bus lines in the City of Vallejo, California, and adjoining territory. Petitioner was an active operating public utility under the jurisdiction of the Railroad Commission of the State of California, and held a certificate of necessity issued by said Commission dated May 6, 1941. During all the times hereinafter mentioned the entire issued and outstanding capital stock of Petitioner [67] was owned as follows:

Luther E. Gibson.....	100
Frank O. Bell.....	100
Harry V. Soanes.....	200

2. On or before May 19, 1942, Luther E. Gibson, Frank O. Bell and Harry V. Soanes entered into an oral partnership agreement for the purpose of acquiring and operating the bus lines then owned and operated by Petitioner. The interests in the capital and profits of said partnership were as follows:

Luther E. Gibson.....	$\frac{1}{4}$
Frank O. Bell.....	$\frac{1}{4}$
Harry V. Soanes.....	$\frac{1}{2}$

On November 12, 1942, said oral partnership agreement was reduced to writing, a copy of which is attached hereto and marked "Exhibit 1." On May 19, 1942, said partnership, doing business under the firm name and style of Vallejo Bus Co., offered to

purchase the operative rights of Petitioner and all Petitioner's assets except four Reo buses for the sum of \$29,937.20.

3. At a special meeting of the Board of Directors of Petitioner held on May 19, 1942, said offer of said partnership was accepted, as set forth in the minutes of said special meeting, a copy of which is attached hereto and marked "Exhibit 2."

4. Said partnership opened a bank account on June 1, 1942, in the name of Vallejo Bus Co., a partnership, and all receipts and revenues from the operation of said business on and after that date were deposited in said bank account.

5. On or about June 11, 1942, endorsements were requested [68] with respect to all policies of insurance issued to Petitioner naming as assured on said policies Luther E. Gibson, Harry V. Soanes and Frank O. Bell, doing business as Vallejo Bus Co. Said endorsements were made by the insurers and were effective on or before June 11, 1942.

6. Record legal title of automobiles as evidenced by ownership certificates were not surrendered to the State authorities for transfer from Vallejo Bus Company to Vallejo Bus Co., and it was not until new ownership certificates were issued in the succeeding year that the record legal title was thus transferred.

7. Petitioner and said partnership entered into an agreement dated June 9, 1942, a copy of which is attached hereto and marked "Exhibit 3."

8. On June 9, 1942, Petitioner filed a petition

with the Railroad Commission of the State of California requesting the Commission to approve the sale and transfer of its assets. On September 15, 1942, said Commission issued its order granting the application of Petitioner and authorizing the transfer of the properties described in said agreement of June 9, 1942. A copy of said petition and a copy of said order of said Commission are attached hereto and marked "Exhibit 4" and "Exhibit 5," respectively. Pursuant to said order and subsequent to September 15, 1942, Petitioner and Luther E. Gibson, Frank O. Bell and Harry V. Soanes, co-partners doing business under the firm name and style of Vallejo Bus Co., duly filed an appropriate time schedule and a withdrawal and adoption notice of tariffs. In said order, said Commission further ordered Luther E. Gibson, Frank O. Bell and Harry V. Soanes, co-partners doing business under the firm name and style of Vallejo Bus Co., to file with said Commission within thirty days, a copy of their partnership agreement. A copy of said agreement was filed with said Commission on November 13, 1942.

9. Petitioner was dissolved on December 31, 1942. Petitioner filed its income tax return for the calendar year 1942 with the Collector of Internal Revenue for the First District of California and reported therein income from the operation of said bus lines for the period January 1, 1942, to May

31, 1942. Said partnership filed its income tax return with the Collector of Internal Revenue for the First District of California and reported therein income from the operation of said bus lines for the period June 1, 1942, to December 31, 1942. The Commissioner has taxed to Petitioner income from the operation of said bus lines for the period June 1, 1942, to September 15, 1942. The only issue in controversy is whether the Commissioner erred in making this adjustment.

10. If the Court determines that the income from the operation of said bus lines for the period June 1, 1942, to September 15, 1942, was correctly reported by said partnership, then there is no deficiency in Petitioner's income tax or declared value excess profits tax for the calendar year 1942, and the deficiency in Petitioner's excess profits tax for the [70] calendar year 1942 is the sum of \$344.26. If the Court determines that the income from the operation of said bus lines from the period June 1, 1942, to September 15, 1942, is taxable to Petitioner, then the deficiencies to be determined by the Court as follows: Declared value excess profits tax deficiency of \$3,074.94, and excess profits tax deficiency of \$27,721.76. It is stipulated that Luther E. Gibson, Docket No. 11045, Frank O Bell, Docket No. 11044, and Harry V. Soanes, Docket No. 11043, are transferees of Petitioner herein and as such are liable for such deficiencies

as may be determined in this proceeding, together with interest thereon as provided by law.

Dated May 20, 1947.

/s/ LEON DE FREMERY,
/s/ CLARENCE E. MUSTO,
Attorneys for Petitioner.

/s/ J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue.
By TMM. [71]

EXHIBIT No. 1

This Agreement of Partnership, made and entered into this 12th day of November, 1942, between Luther E. Gibson, Harry V. Soanes, and Frank O. Bell, all of the City of Vallejo, Solano County, California;

Witnesseth:

That said parties hereto mutually agree as follows:

1. The said parties hereto shall as partners engage in the business of owning and operating an automotive service for the common carrier transportation of passengers and such allied businesses and operations as may hereafter be agreed upon by said partners.
2. That the name of said partnership shall be Vallejo Bus Co.
3. That the place of business of said partner-

ship shall be located in the City of Vallejo, County of Solano, State of California.

4. That the capital of said partnership shall be Twenty-nine thousand Nine Hundred thirty-seven and 27/100 (\$29,937.27) Dollars, being the purchase price of the operative rights and properties of "Vallejo Bus Company, a Corporation," all as more particularly described in an agreement made and entered into June 9, 1942, by and between said "Vallejo Bus Company, a corporation" as Seller, and the parties hereto as co-partners, as Buyers; and it is agreed that said [72] capital has been contributed by said partners in the following proportions: One-fourth thereof by Luther E Gibson, one-half thereof by Harry V. Soanes, and one-fourth thereof by Frank O. Bell.

5. That each partner shall devote such time and attention to the business of the partnership as may from time to time be agreed upon by said partners, and each partner shall have only such power and authority and responsibility as may from time to time be agreed upon by said partners and each partner shall receive such salary for such services as may from time to time be agreed upon by said partners; it being specifically agreed that in all partnership matters, a majority in interest shall determine such matters as may be brought before said partners for determination.

6. That full and accurate accounts of all transactions of said partnership shall be kept in proper books of account, and each partner shall cause to

be entered upon said partnership books a full and accurate account of all transactions on behalf of the partnership; that said books of the partnership shall be kept at the place of business of the partnership and each party shall at all times have access to and may inspect and copy any of them. That until otherwise determined upon by said partnership, said books shall be kept under the general supervision of L. H. Penney and Company, Certified Public Accountants, and in the event of any dispute among the partners as to any accounting matters, the decision of said [73] L. H. Penney and Company, or such other certified public accountants as may succeed said firm, shall be final and binding upon each and all of the partners.

7. That neither partner will, without the consent of the partnership, make, execute, deliver, endorse or guarantee any notes or other commercial paper, nor agree to answer for or indemnify against any act, debt, default or misconduct of any person.

8. That in order to assure continuity in management and operation of said partnership, in the event of the death of any partner, it is agreed that some comprehensive scheme involving insuring the lives of the partners, the premiums to be paid out of the partnership funds, shall be arranged for and agreed upon by the partners, and that the same shall be put into effect just as soon as possible after the execution of this agreement.

9. The partners hereto agree to exercise the ut-

most of good faith in all details of their dealings with each other, and to fully and completely confide in each other in all partnership matters, to the end that a spirit of cordiality and confidence shall exist among them at all times, and each partner agrees to do and perform such acts as may be necessary to insure the success of said partnership venture.

In Witness Whereof, the parties hereto have hereunto [74] set their hands, the day and year first hereinabove written.

LUTHER E. GIBSON,
HARRY V. SOANES,
FRANK O. BELL. [75]

EXHIBIT No. 2

SPECIAL MEETING OF THE BOARD OF
DIRECTORS OF THE VALLEJO BUS
COMPANY

May 19, 1942

A special meeting of the Board of Directors of The Vallejo Bus Company was held in the office of President Luther E. Gibson, 516 Marin Street, Vallejo, California, at 10:00 o'clock a.m. on the above date.

Directors present: President, Luther E. Gibson; Vice President, Harry V. Soanes; Secretary, Frank O. Bell.

Russell F. O'Hara, attorney for the Corporation

and L. Penney, Auditor and Accountant, also were present.

The meeting was called to order by President Luther E. Gibson.

The minutes of the last meeting were read and approved.

There was thereupon placed before the Board by Russell F. O'Hara, a proposition whereby the Corporation would transfer it's operative rights and assets to Luther E. Gibson, Harry V. Soanes and Frank O Bell, a Co-Partnership doing business under the firm name and style of The Vallejo Bus Co.

After some discussion an offer was made to the Corporation by Luther E. Gibson, Harry V. Soanes and Frank O. Bell to purchase the operative rights and all of the assets of the Corporation save and except four Reo buses bearing motor numbers:

110A-4135

110A-4414

110A-4724

110A-4925

for the sum of \$29,937.20 cash; said sale to become effective on the 1st day of June, 1942, subject to the approval of said transfer by the Railroad Commission of the State of California.

Following some discussion concerning said offer it was regularly moved and seconded that the following resolution be adopted:

“Be it resolved: That the offer made to this Corporation by Luther E. Gibson, Harry V.

Soanes and Frank O. Bell, Co-Partners doing business under the firm name and style of The Vallejo Bus Co. to purchase the operative rights of the Corporation and all of the assets of the Corporation save and except four Reo Busses bearing motor numbers 110A-4135, 110A-4414, 110A-4724 and 110A-4925, for the sum of \$29,937.20 be and the same is hereby accepted; and that the sale and transfer of said operative rights and assets be effective as of the 1st day of June, 1942, subject to the approval of the Railroad Commission of the State of California, and that the President and Secretary of the Corporation be authorized to execute and deliver all documents, papers and agreements necessary to complete said sale and transfer, and to file all necessary petitions and pleadings and documents with the Railroad Commission of the State of California."

Voted and unanimously approved.

It was further moved and seconded and approved that copies of necessary agreements and papers executed by the Corporation in connection with the above resolution be attached to the minutes of this meeting and be made part thereof.

There being no further business, the meeting adjourned.

/s/ FRANK O. BELL,
Secretary. [77]

EXHIBIT No. 3

This Agreement, made and entered into this 9th day of June, 1942, by and between Vallejo Bus Company, a corporation, as Seller, and Luther E. Gibson, Harry V. Soanes and Frank O. Bell, co-partners doing business under the firm name and style of Vallejo Bus Co., as Buyers;

Witnesseth:

That said Seller agrees to sell unto said Buyers and said Buyers agree to buy of and from said Seller, the following described personal property, to wit:

Being the following busses, to wit:

1936 Federal	Motor No. 554586
1936 Studebaker	Motor No. DR58574
1928 Yellow Coach	Motor No. 2493217
1940 International	Motor No. HD213C949
1940 International	Motor No. HD213C935
1929 Yellow Coach	Motor No. 337829
1929 Yellow Coach	Motor No. 3-38724Y
1932 Twin Coach	Motor No. 506527
1932 Twin Coach	Motor No. 506681
1932 Twin Coach	Motor No. 506526
1932 Twin Coach	Motor No. 506743
1932 Yellow Coach	Motor No. 2596241
1929 Yellow Coach	Motor No. S20483Y
1941 Chevrolet	Motor No. AJ1130927
1941 Chevrolet	Motor No. BJ2177
1941 Chevrolet	Motor No. 2AJ1130920
1941 Chevrolet	Motor No. 2AJ1130944
1942 Chevrolet	Motor No. BA283526

Coupe

Also, all machinery, tools and equipment, furniture and fixtures, transportation equipment including coin boxes, all business fixtures and improvements to the premises from which the

business of said Seller is operated, together with materials and supplies therein contained, and prepaid insurance; also all franchises and operating rights of the said Seller.

To Have and to Hold the same unto said Buyers for [78] the sum of Twenty Nine Thousand Nine Hundred Thirty Seven and 20/100 (\$29,937.20) Dollars, in lawful money of the United States of America, receipt of which is hereby acknowledged by the said Seller.

It Is Understood and Agreed that the sale of said personal property herein above described shall be effective as of June 1, 1942, but that same is subject to the approval of the Railroad Commission of the State of California and in the event said approval is not forthcoming, this agreement will be null and void and of no effect, and the parties hereto shall be and remain in the same relationship and in the same situation that they are in prior to the execution of this agreement, and shall occupy the identical positions and relationships that they would have occupied had this agreement not existed.

Upon receiving the approval of the Railroad Commission of the State of California to said sale, the parties hereto and each of them agree to execute and deliver any and all instruments and documents necessary or convenient to carry into being the full intent and purpose of this agreement, and at such time the parties hereto shall negotiate a lease in terms agreeable to both parties, wherein

and whereby said Seller shall lease unto said Buyers the following described Reo busses of the said Seller:

Motor No. 110A-4135

Motor No. 110A-4414

Motor No. 110A-4724

Motor No. 110A-4925

In Witness Whereof, the parties hereto have executed [79] this agreement in duplicate, the day and year first above written.

VALLEJO BUS COMPANY,
a Corporation,

By LUTHER E. GIBSON,
President,

By FRANK O. BELL,
Secretary.

LUTHER E. GIBSON,

FRANK O. BELL,

HARRY V. SOANES,

Co-Partners doing business under the firm name
and style of Vallejo Bus Co. [80]

EXHIBIT No. 4

Before the Railroad Commission of the State
of California

In the matter of the Application of Vallejo Bus Company, a corporation, to sell, and of Luther E. Gibson, Harry V. Soanes, and Frank O. Bell, co-partners doing business under the firm name and style of Vallejo Bus Co., to purchase the automotive service for the common carrier transportation

of passengers between the City of Vallejo and Mare Island Navy Yard, Vallejo Annex, Emerald Terrace, Bay Terrace, Vista de Vallejo, Fairmont Gardens, Hanns Tract, Highway Homes Addition, and South Vallejo, and intermediate points as a unified and consolidated operation.

PETITION

The petition of Vallejo Bus Company, a corporation, and Luther E. Gibson, Harry V. Soanes and Frank O. Bell, co-partners doing business under the firm name and style of Vallejo Bus Co., respectfully shows:

That applicant Vallejo Bus Company, a corporation, is at the present time engaged in the operation of an automotive service for the transportation of passengers between the City of Vallejo and Mare Island Navy Yard, Vallejo Annex, Emerald Terrace, Bay Terrace, Vista de Vallejo, Fairmont Gardens, Hanns Tract, Highway Homes Addition, and South Vallejo, and intermediate points, under a certificate heretofore granted by the Railroad Commission of the State of California, by Decision No. 34167 dated May 6, 1941, and its amendments and supplements.

That the postoffice addresses of each of the applicants is as follows:

Vallejo Bus Company, a corporation, 316 Napa Street, Vallejo, Calif.

Luther E. Gibson, Harry V. Soanes and Frank O. Bell, Co-Partners Doing Business under the Firm Name and [81] Style of Vallejo Bus Co., 316 Napa St., Vallejo, Calif.

Luther E. Gibson, 1137 Tuolumne St., Vallejo, California.

Harry V. Soanes, 1094 Calaveras Street, Vallejo, California.

Frank O. Bell, 1117 Tuolumne Street, Vallejo, California.

The Applicant, Vallejo Bus Company, a corporation, proposes to sell, and Applicant Luther E. Gibson, Harry V. Soanes and Frank O. Bell, co-partners doing business under the firm name and style of Vallejo Bus Co., propose to purchase the operative rights used in the business of transporting passengers between the City of Vallejo and Mare Island Navy Yard, Vallejo Annex, Emerald Terrace, Bay Terrace, Vista de Vallejo, Fairmont Gardens, Hanns Tract, Highway Homes Addition, and South Vallejo, and intermediate points, under an agreement heretofore entered into, a copy of which is attached hereto and marked Exhibit A.

The consideration to be paid for the property herein proposed to be transferred, is the sum of \$29,937.20 of which the sum of \$28,437.20 represents the value of the equipment, and \$1500.00 represents the value of the operative rights.

Wherefore, Applicants ask that the Railroad Commission of the State of California make its

order authorizing the transfer as herein petitioned for.

Dated at Vallejo, California, [82] this 9th day of June, 1942.

VALLEJO BUS COMPANY,
a Corporation,

By LUTHER E. GIBSON,
President,

By FRANK O. BELL,
Secretary.

LUTHER E. GIBSON,
FRANK O. BELL,
HARRY V. SOANES,

Co-Partners Doing Business Under the Firm
Name and Style of Vallejo Bus Co.

O'HARA & RANDALL and
VICTOR M. CASTAGNETTO,
Attorneys for Applicants. [83]

State of California,
County of Solano—ss.

Luther E. Gibson, Harry V. Soanes and Frank O. Bell, being first duly sworn, each for himself, deposes and says: That he has read the foregoing application and knows the contents thereof; that the same is true of his own knowledge, except as to

the matters therein stated on information and belief, and as to such matters, he believes it to be true.

LUTHER E. GIBSON,
HARRY V. SOANES,
FRANK O. BELL.

Subscribed and sworn to before me this 9th day of June, 1942.

[Seal] SYLVIA S. SPENCER,
Notary Public in and for the County of Solano,
State of California. [84]

State of California,
County of Solano—ss.

Luther E. Gibson and Frank O. Bell, being first duly sworn, depose and say: That they are the President and Secretary, respectively, of Vallejo Bus Company, a corporation, Applicant in the foregoing Petition named; that they have read the same and know the contents thereof, and that the same is true of their own knowledge, except as to the matters therein stated on information and belief, and as to such matters, they believe it to be true.

LUTHER E. GIBSON,
FRANK O. BELL.

Subscribed and sworn to before me this 9th day of June, 1942.

[Seal] SYLVIA S. SPENCER,
Notary Public in and for the County of Solano,
State of California. [85]

EXHIBIT No. 5

VALLEJO BUS COMPANY

APPLICATION No. 25072

ORDER OF RAILROAD COMMISSION OF
THE STATE OF CALIFORNIA

A public hearing having been held on the above entitled application before Examiner Fankhauser, and the Commission having considered the testimony submitted at such hearing and it being of the opinion that this application should be granted subject to the provisions of this order, therefore,

It Is Hereby Ordered that Vallejo Bus Company, a corporation, be, and it is hereby, authorized to transfer, on or before December 31, 1942 to Luther E. Gibson, Harry V. Soanes and Frank O. Bell, copartners doing business under the firm name and style of Vallejo Bus Co., the properties described in the agreement on file in this proceeding, together with the operative rights created by Decision No. 34167, dated May 6, 1941, as amended by Decision No. 34355, dated July 1, 1941, as amended by Decision No. 34484, dated August 12, 1941, as amended by Decision No. 35195, dated March 31, 1942, and as amended by Decision No. 35331, dated May 5, 1942, provided, that the authority hereby granted is subject to the provisions of Section 52(b) of the Public Utilities Act, and further to the condition that Luther E. Gibson, Harry V. Soanes and Frank O. Bell, copartners doing business under the firm name and style of Vallejo Bus Company, their successors and assigns shall never claim before [86] this Commission or any court or

any other public body, a value for said operative rights, or claim as the cost thereof, an amount in excess of that paid for said rights by those to whom said rights were originally granted.

It Is Hereby Further Ordered that Vallejo Bus Company and Luther E. Gibson, Harry V. Soanes and Frank O. Bell, copartners doing business under the firm name and style of Vallejo Bus Co., comply with Part IV of General Order No. 93-A and General Order No. 79 by filing an appropriate time schedule and a withdrawal and adoption notice of tariffs within sixty (60) days of the date hereof and upon not less than one (1) day's notice to the Commission and public.

It Is Hereby Further Ordered that Luther E. Gibson, Harry V. Soanes and Frank O. Bell, copartners doing business under the firm name and style of Vallejo Bus Co., shall within thirty (30) days after they acquire the aforesaid properties, file with the Commission a copy of their partnership agreement.

It Is Hereby Further Ordered that this order shall become effective upon the date hereof.

Dated at San Francisco, California, this 15th day of September, 1942.

JUSTUS F. CRAEMER,
C. C. BAKER,
FRANCK R. HAVENNER,
RICHARD SACHSE,
Commissioners.

[Endorsed]: Filed May 26, 1947. [87]

PETITIONER'S EXHIBIT No. 1

Decision No. 36242

Before the Railroad Commission of the State of California.

Case No. 4672

In the Matter of the Investigation on the Commission's own motion into the reasonableness of the rates, rules, regulations, charges, classifications, contracts, practices, operations and service, or any of them, of Vallejo Bus Company.

Morrison, Hohfeld, Foerster, Shuman & Clark, by Forrest A. Cobb, and Frank O. Bell, for respondent Vallejo Bus Company; John Stewart, Mayor, City of Vallejo; Rollin L. Pope, City Attorney, City of Vallejo; George J. O'Neill, for Petaluma Subdivision; C. F. Hatch, for Vallejo Chamber of Commerce; Ollie Ross, for certain taxpayers.

Sachse, Commissioner:

OPINION

On February 4, 1943, an investigation into the reasonableness of the fares of the Vallejo Bus Company was instituted by the Commission on its own motion, after a preliminary survey of the situation and recommendation by the staff.

Public hearings were held in Vallejo March 3 and 10, 1943. The matter is now under submission and is ready for decision.

At the hearing a report was presented by the

Commission's Transportation Research Engineer Homer H. Grant as Exhibit No. 1 setting forth the past operating results of the Vallejo Bus Company, together with estimated results which would obtain under different fare structures.

It is shown in this exhibit that Vallejo has had a tremendous war-time growth and that the operations of the company have increased correspondingly. The population of the city increased from approximately 30,000 in 1940 to more than 90,000 on January 1, 1943 (an increase of 200 per cent), whereas the number of passengers carried by the company increased about ten times, viz., from 345,000 in 1940 to nearly 3,000,000 in 1942.

A very large number of temporary housing units have been constructed in government housing projects in and adjacent to the City. [88] The type of construction employed in these projects is in keeping with their present use as contrasted with a normal and more permanent building program. Service of the Vallejo Bus Company has been extended to include all of the new projects except Chabot Terrace, which is approximately five miles from the business center of the city. This new subdivision is provided with local transportation by buses operated by the Navy when not engaged in its regular service in transporting passengers to and from the Navy Yard at Mare Island.

A recent revision of routes effective January 1, 1943, increased the number of routes in operation from six to nine. The coach mileage was thereby

increased from 1,500 miles per day to more than 2,100 miles per day, or 45 per cent. Sections of the highway along some of the routes are in a bad condition owing to heavy travel and inadequate maintenance.

Since June 1, 1941, the company has been owned by Luther E. Gibson, President, Harry B. Soanes, Vice President, and Frank O. Bell, Manager, having control relationships of 25 per cent, 50 per cent, and 25 per cent, respectively. The company operated as a corporation until June 1, 1942, after which time it becomes a partnership.

It is shown in Exhibit No. 1 that from June 30, 1941, to January 31, 1943, the book cost of property devoted to public service, including \$350 for organization, materials, and supplies, increased from approximately \$10,000 to \$96,000. The depreciated book cost of property increased from \$9,757 to \$82,078 during the same period. Depreciation reserves were calculated by the engineer on the basis of depreciable lives used in the report, namely: two years for old equipment; for fairly new equipment, five years for coaches costing approximately \$4,500 and six years for coaches costing approximately \$6,500 each. It was assumed that old equipment would be retired at the end of the [89] present emergency, whereas new equipment would continue to be used under the substantial peace-time operations which may be expected to continue during the postwar period.

The company owns no land at the present time.

Transit equipment consists of 25 motor coaches. nine of which are at least ten years old, one is six years old, and the remaining 15 are quite new. The new coaches are largely of Reo manufacture with transit type bodies seating 32 persons. These were purchased at an average cost of approximately \$6,000.

Present fares in Vallejo are 10 cents cash, or three tokens for 25 cents, with a 5-cent school fare. With these fares in effect operating revenues of the company increased from \$10,614 in January, 1942, to \$35,998 in January, 1943.

The record shows that based on the average depreciated book cost of property, with no allowance for working capital but after payment of income taxes,¹ the company, after showing a loss in 1938, earned a rate of return as follows: 19 per cent for 1939; 59 per cent for 1940; 103 per cent for 1941; and 121 per cent for 1942. The operating figures for this five-year period are shown on the following Table I, which is taken from Exhibit I, Schedule IV.

¹ Estimated for 1942 by the Commission's engineer.

Table I

VALLEJO BUS COMPANY

STATEMENT OF OPERATING INCOME AND RATE OF RETURN

1938-1942, inclusive

Item	1938	1939	1940	1941	1942
Revenue Passengers.....	278,587	273,988	345,535	702,386	2,909,888
Operating Revenue.....	\$25,262.20	\$20,867.62	\$31,098.19	\$65,079.83	\$265,627.62
Operating Expenses.....	26,618.95	19,789.66	27,297.11	51,372.58	140,979.67
Operating Income.....	\$ 1,356.75*	\$ 1,077.96	\$ 3,801.08	\$13,707.25	\$124,647.95
(Before Income Tax)					
Income Tax.....	\$ 278.07	\$ 5,500.00	\$ 59,328.13
Operating Income.....	\$ 1,356.75*	\$ 1,077.96	\$ 3,523.01	\$ 8,207.25	\$ 65,319.82
(After Income Tax)					
Book Cost of Prop.....	\$15,346.98	\$12,137.52	\$14,644.08	\$35,459.13	\$ 95,549.75
Less Reserve for Depr.....	8,783.49	7,513.13	7,418.43	10,766.25	12,859.15
Deprec. Book Cost.....	\$ 6,563.49	\$ 4,624.39	\$ 7,225.65	\$24,692.88	\$ 82,690.60
Avg. Depreciated Book Cost.....	8,282.13	5,593.94	5,925.02	7,983.03	53,869.83
Rate of Return on Avg. Deprec. Book Cost After Income Tax (%).....	16.38*	19.27	59.5	103.0	121.3

*—Red Figure.

The present service and operation is on a somewhat different basis from that before January 1, 1943, as the routing was materially increased. The month of January, 1943, provides the only actual operating experience under the company's expanded service program. After showing that January was a representative month in Vallejo, the Commission's engineer expanded January figures to a yearly basis, using actual passengers carried with no allowance for any increase in the number of passengers who undoubtedly would be attracted by a reduction in fares. On this conservative basis, but using 1942 income tax rates, the rate of return for 1943 would be 106 per cent under present fares and 24 per cent under a straight 6-cent fare, whereas a straight 5-cent fare would indicate a substantial yearly loss calculated on the rate base used in the engineer's report. Increased income taxes in 1943 would further reduce these rates of return.

Mr. Grant testified that while a 6-cent fare would appear to be liberal he suggested that the Commission give consideration to a token fare of five tokens for 30 cents with a 10-cent cash fare because the company is not at this time equipped with fare boxes to register pennies and new coin boxes cannot now be obtained.

Representatives of the company requested and were granted a week to study the report of the Commission's engineer, after which time another hearing was held in Vallejo on March 10, 1943. At

the adjourned hearing the representatives of the company pointed out that the owners of the property had reinvested the earnings in purchasing new equipment to further improve the service in the city, that the service has been very greatly expanded from the normal peace-time operations, and that the risk incurred by the company is abnormally high owing to the war-time temporary development of the city and the possibility of collapse if the war should be suddenly ended. The company also stated its belief that a fare of four tokens for 25 cents, 10 cents cash, would tend to increase the speed of operations somewhat over a fare of five tokens for 30 cents and 10 cents cash, because of the shorter time necessary in making change. It was further contended by the company that the net increase in revenue would be small because in its opinion the number of persons purchasing tokens under a four for 25 cents arrangement would be materially greater than the number who would purchase tokens under a fare of five for 30 cents.

The Mayor of the City of Vallejo stated that the city was interested in having the best possible service at the lowest reasonable fare, and indicated that a rate structure with four tokens for 25 cents would be more convenient for the majority of passengers than a required purchase of five tokens for 30 cents.

This record supports the following conclusions: That fares in Vallejo should be immediately reduced; that in view of the highly uncertain war-

time conditions existing in Vallejo and the consequently increased financial risk, together with the extraordinary burden on equipment owing to war-time overloading, the Commission is justified in allowing rates of return proportionately higher than would obtain [92] under normal peace-time conditions; that in the interest of providing reasonably satisfactory local transportation for the City of Vallejo at reasonable rates it appears that under the present unusual operating conditions a close check should be kept of the financial and operating results under the lower fare structure prescribed in this decision; and that a fare of four tokens for 25 cents and 10 cents cash, with a 5-cent school fare should be instituted on a temporary basis until such time as changed conditions require a further adjustment. Accordingly the following form of order is recommended.

ORDER

Public hearings have been held in the above entitled matter, the matter having been submitted, and the Commission being fully advised,

It Is Ordered that Vallejo Bus Company shall within fifteen days from the effective date of this order, establish a fare of four tokens for 25 cents and 10 cents cash without change in the present school fare.

It Is Further Ordered that notice of the reduced fares shall be conspicuously displayed in all motor

coaches of Vallejo Bus Company for a period of sixty (60) days.

It Is Further Ordered that Vallejo Bus Company shall comply with the provisions of General Order No. 79 by filing in triplicate Tariffs satisfactory to the Commission, within fifteen days from the date hereof, on not less than one day's notice to the Commission and the public.

It Is Further Ordered that jurisdiction herein shall be and it is hereby reserved by the Commission to make such further order or orders in this proceeding as the Commission in its discretion may deem [93] just and proper.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 23rd day of March, 1943.

FRANCK R. HAVENNER,
C. C. BAKER,
JUSTUS F. CRAEMER,
RICHARD SACHSE,
FRANK W. CLARK,
Commissioners.

Certified as a True Copy.

[Seal] /s/ NOEL COLEMAN,

Assistant Secretary, Public Utilities Commission,
State of California. [94]

EXCERPTS FROM PETITIONER'S
EXHIBIT No. 2

* * * *

San Francisco, California

March 1, 1943

Case No. 4672

Mr. Warren K. Brown,
Director of Transportation
and

Mr. J. G. Hunter,
Assistant Director of Transportation and
Chief Engineer

A study of the operations of the Vallejo Bus Company has been completed and is transmitted herewith.

Briefly, in my opinion, the study reveals that a six-cent fare would be adequate in Vallejo under present conditions, considering abnormal war risks. However, the company is not at present equipped to utilize multi-coin fares and it is doubtful whether multi-coin fare boxes can be obtained. It is, therefore, suggested that at least until such time as multi-coin fare boxes can be obtained, consideration be given to a fare structure of five tokens for 30 cents and ten cents cash. This would eliminate the use of pennies and speed up operations, yet provide interested passengers with a six-cent fare. A six-cent fare should save the people of Vallejo approximately \$145,000 each year; while, with a fare structure of five tokens for 30 cents, ten cents cash, the saving should be approximately \$126,000 each year.

Mr. O. B. Liersch, Associate Engineer, examined the books of the company and prepared the schedules in this report.

Respectfully submitted,

/s/ HOMER H. GRANT,

Transportation Research Engineer.

* * * *

SCOPE OF INVESTIGATION

The scope of this investigation has been limited largely to matters relating directly to fares. Service of the company was recently reviewed in a report prepared by the Service and Permit Division, which resulted in rerouting of certain lines effective January 1, 1943.

* * * *

DEVELOPMENT OF TRANSIT COMPANY

The original Vallejo Bus Company was a co-partnership, composed of H. N. Richards, V. C. Gorst, and H. W. Lowell, which began operation on December 4, 1915, for the transportation of passengers over regular routes wholly within the incorporated limits of the City of Vallejo. The co-partnership thereafter from time to time was granted certificates from the Railroad Commission to extend its operations over various routes in the vicinity of Vallejo.¹

¹ Application No. 4834, Decision No. 6611, August 29, 1919;

Application No. 5428, Decision No. 7465, April 21, 1920;

Application No. 6098, Decision No. 8182, October 1, 1920.

Mr. H. W. Lowell acquired the interests of Mr. Richards and Mr. Gorst on March 21, 1927,² thereby becoming the sole owner of Vallejo Bus Company. Upon the death of Mr. Lowell in 1935, Agnes Irene Geer and Bruce McCarthy were named executrix and co-executor, respectively. The Vallejo Bus Company, a corporation, on August 17, 1936, acquired all right, title, and interest in the estate of H. W. Lowell. After the death of Mr. Lowell the executrix and later the corporation filed various other applications for extensions and changes in operating rights.³

² Application No. 13588, Decision No. 18099, March 21, 1927.

³ Application No. 24037, Decision No. 28733, April 20, 1936;

Application No. 20683, Decision No. 29057, August 17, 1936;

Application No. 20744, Decision No. 29138, September 28, 1936;

Suppl. Appl. No. 4834, Decision No. 30882, May 23, 1938, rerouting service between Vallejo and Vallejo Annex;

Application No. 22600, Decision No. 32236, August 8, 1939, application to discontinue South Vallejo and Solano Service, dismissed;

Suppl. Appl. No. 4834, Decision No. 34167, May 6, 1941;

Suppl. Appl. No. 20437, Decision No. 34196, May 13, 1941;

Suppl. Appl. No. 4834, and Suppl. Appl. No. 20437, Decision No. 34355, July 1, 1941;

Suppl. Appl. No. 20437, Decision No. 34484, August 12, 1941;

2nd Suppl. Appl. No. 20437, Decision No. 35195, March 31, 1942;

3rd Suppl. Appl. No. 20437, Decision No. 35331, May 5, 1942.

On June 1, 1941, Luther E. Gibson, Harry B. Soanes, and Frank O. Bell acquired the corporate stock of the Vallejo Bus Company and took over the management. On June 19, 1942, Vallejo Bus Company (a corporation) filed Application No. 25072 to sell its operative rights and property to the Vallejo Bus Company, a partnership consisting of Mr. Gibson, Mr. Soanes, and Mr. Bell. The present proportion of ownership, we understand, is as follows: Soanes, 50 per cent; Gibson, 25 per cent; and Bell, 25 per cent. This application was granted under Decision No. 35777, dated September 15, 1942. On December 15, 1942, all previous certificates, except between Vallejo and Mare Island were revoked and a new certificate was granted to the partnership to operate over routes in Vallejo and contiguous territory.⁴

Authority for suspension of service between Mare Island and the City of Vallejo during the time passenger bus service is operated by the Naval authority was also granted on December 15, 1942.⁵

The Vallejo Bus Company, a corporation, transferred most of its operating property to the partnership as of June 1, 1942; however, some of the motor coach equipment was retained by the corporation which continued in existence until the end of 1942, for various technical reasons. However, in this report the corporate structure has been dis-

⁴ Application No. 25408, Decision No. 36028, December 15, 1942. See "Service" for description of routes.

regarded, except where involved in income tax computations, and the net earning power of the company is related directly to the property used and useful in the public service. [98]

INCOME TAX

Income taxes computed herein are based on the actual type of organization of the company. In other words, the first five months of 1942, are computed on a corporation basis and remaining months are on a partnership basis. Since this study concerns only the operations of the Vallejo Bus Company rates must be applied as though income from the company is the only income of a partner. A partner having several profitable businesses will of course find his tax reaching the higher tax rate brackets. However, consideration of this hypothetical question is beyond the scope of this investigation.

In computing the rates of return shown in Table III and Schedule IV income taxes have been treated as an expense, in conformance with rulings of the U. S. Supreme Court. With regard to income tax the court said in *Georgia Railway Company vs. Railroad Commission*:⁷ "The Commission treated the tax as a proper operating charge. The court disallowed it and thus increased its estimate of probable net income. In this the court erred."

10 T. C. No. 17

The Tax Court of the United States
The Vallejo Bus Company, Petitioner, v. Commissioner of Internal Revenue, Respondent.

Harry V. Soanes, Petitioner, v. Commissioner of Internal Revenue, Respondent.

Frank O. Bell, Petitioner, v. Commissioner of Internal Revenue, Respondent.

Luther E. Gibson, Petitioner, v. Commissioner of Internal Revenue, Respondent.

Docket Nos. 11046, 11043, 11044, 11045

Promulgated January 23, 1948

The shareholders of a California corporation engaged in the operation of a bus line took over the corporation's business and assets on June 1, 1942, under a contract of purchase and sale, and continued operation of the business as partners. By California statute the sale of a public utility is void until approved by the California Railroad Commission which did not give its approval of this sale until September 15, 1942. The contract provided that the sale be subject to such approval and void if not approved.

Income from operation of the business during the period June 1-September 15, 1942, held, taxable to the corporation and not to the partners.

CLARENCE E. MUSTO, ESQ.,

For the Petitioners.

THOS. M. MATHER, ESQ.,

For the Respondent. [100]

OPINION

Johnson, Judge: The Commissioner determined against the Vallejo Bus Company (hereafter called petitioner corporation) a deficiency of \$3,074.94 in declared value excess-profits tax and a deficiency of \$27,721.76 in excess-profits tax for the year 1942, and asserted against the individual petitioners, Harry V. Soanes, Frank O. Bell and Luther E. Gibson, as transferees of petitioner corporation's assets, liability for these deficiencies. The individual petitioners concede liability for any deficiency due, but contend that the Commissioner erroneously included in the corporation's 1942 income the profits of their partnership for the period June 1-September 15, 1942. The proceedings were consolidated for hearing and decision and were submitted upon a stipulation and exhibits which we adopt as findings of fact and from which it appears that:

The Vallejo Bus Company, a California corporation with principal office at Vallejo, California, filed its income and profits tax returns for 1942 with the collector of internal revenue for the first district of California. It engaged in the operation of bus lines in the vicinity of Vallejo, and reported income from such operations for the period January 1-May 31, 1942. The individual petitioners, all residents of Vallejo and shareholders of the corporation, formed a partnership which acquired the bus lines, and filed a partnership return for 1942 with the same collector, reporting income from bus operation for the period June 1-December 31, 1942.

Under the view that the partnership's acquisition did not become effective until September 15, 1942, the Commissioner shifted the income from the business for the period June 1-September 15 from the partnership to the corporation, and [101] this shift the petitioners assail.

As a public utility, the petitioner corporation was subject to the Railroad Commission of the State of California. Of its capital stock, petitioner Soanes owned 50 per cent; Gibson and Bell, 25 per cent each. Having decided to operate the business as a partnership, the three made an oral agreement on May 19, 1942, to acquire and operate the lines under the firm name of Vallejo Bus Co., each having an interest in the partnership proportionate to his share-holdings in the corporation. The oral partnership agreement was reduced to writing and signed by the parties on November 12, 1942. The partnership, on May 19, 1942, made offer to petitioner corporation to purchase its operative rights and all of its assets except four Reo buses, for the sum of \$29,937.20 cash, which offer petitioner corporation on that day accepted and in the minutes of petitioner corporation concerning the transaction it is recited that the offer of sale and acceptance was

* * * to become effective on the first day of June, 1942, subject to the approval of said transfer by the Railroad Commission of the State of California.

The contract of sale between petitioner corpora-

tion and the partnership was reduced to writing and signed by the parties on June 9, 1942, and in it was contained the following:

It Is Understood and Agreed that the sale of said personal property herein above described shall be effective as of June 1, 1942, but that same is subject to the approval of the Railroad Commission of the State of California and in the event said approval is not forthcoming, this agreement will be null and void and of no effect, and the parties hereto shall be and remain in the same relationship and in the same situation that they are in prior to the execution of this agreement, and shall occupy the identical positions and relationships that they would have occupied had this agreement not existed. [102]

Upon receiving the approval of the Railroad Commission of the State of California to said sale, the parties hereto and each of them agree to execute and deliver any and all instruments and documents necessary or convenient to carry into being the full intent and purpose of this agreement, * * *

On June 9, 1942, petitioner corporation as seller and the individual partners as buyers filed a petition with the Railroad Commission of the State of California, requesting the Commission to approve the sale and transfer of its assets and operative rights to the partnership, and on September 15,

1942, the Commission issued its order granting and approving same and further requiring that the partnership within sixty days file an appropriate time schedule and a withdrawal and adoption notice of tariffs as required by the Commission's regulations, and furthermore to file within thirty days a copy of the partnership agreement. Petitioner corporation was dissolved on December 31, 1942.

The partnership opened a bank account on June 1, 1942, in the name of Vallejo Bus Co., a partnership, and all receipts and revenues from the operation of the business on and after that date were deposited in such bank account.

Effective on or before June 11, 1942, the beneficiaries in all policies of insurance were changed from petitioner corporation to "Luther E. Gibson, Harry V. Soanes and Frank O. Bell, doing business as Vallejo Bus Co." The record legal title of automobiles owned by petitioner corporation was not changed to the partnership until 1943.

Were the profits derived from the operation of the bus lines from June 1, 1942, to September 15, 1942, taxable to petitioner corporation? The answer depends upon when the sale and transfer from the corporation to the partnership was consummated. Petitioner says this was June 1; respondent [103] contends it was September 15. Under the law of the State of California,¹ no public utility (such as

¹ General Laws of the State of California—Public Utilities Act. Sec. 51.

tion and the partnership was reduced to writing and signed by the parties on June 9, 1942, and in it was contained the following:

It Is Understood and Agreed that the sale of said personal property herein above described shall be effective as of June 1, 1942, but that same is subject to the approval of the Railroad Commission of the State of California and in the event said approval is not forthcoming, this agreement will be null and void and of no effect, and the parties hereto shall be and remain in the same relationship and in the same situation that they are in prior to the execution of this agreement, and shall occupy the identical positions and relationships that they would have occupied had this agreement not existed. [102]

Upon receiving the approval of the Railroad Commission of the State of California to said sale, the parties hereto and each of them agree to execute and deliver any and all instruments and documents necessary or convenient to carry into being the full intent and purpose of this agreement, * * *

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Were the profits derived from the operation of the bus lines from June 1, 1942, to September 15, 1942, taxable to petitioner corporation? The answer depends upon when the sale and transfer from the corporation to the partnership was consummated. Petitioner says this was June 1; respondent [103] contends it was September 15. Under the law of the State of California,¹ no public utility (such as

¹ General Laws of the State of California—Public Utilities Act. Sec. 51.

the bus lines here) could be sold "without first having secured from the Railroad Commission an order authorizing" it. And the act further provides that any "such sale made other than in accordance with the order of the Commission authorizing same shall be void." The order of the Commission authorizing the sale was not obtained until September 15, 1942, and transactions prior thereto would appear to be executory and lacking in finality.

The petitioner corporation, however, in its brief, asserts that the date on which the Railroad Commission promulgated its approval of the sale and transfer is not material in determining the effective date thereof, and cites *Hanlon v. Eshleman*, 169 Cal. 200, 146 Pac. 656 (1915), and *Otter Tail Power Co. v. Clark*, 59 N. D. 320, 229 N. W. 915 (1930). These cases do not sustain petitioner's contention. *Hanlon v. Eshleman* was a mandamus proceeding brought to compel the Railroad Commission of California to pass upon the proposed sale of a public utility which the owner had contracted to sell to complainant but refused to carry out; the owner had not applied to the Commission for authority to make the sale; the City of Los Angeles was also seeking to acquire part of the land comprising the waterworks, the utility involved. The Supreme Court of California held that it was not the function of the Commission to determine the validity of a contract of sale, when contested, nor rights of parties thereunder, nor to com-

pel the owners to sell, these being questions for the courts, not the Commission. [104]

Otter Tail Power Co. v. Clark, *supra*, was a North Dakota case where the state law concerning the sale of a public utility is similar to that of California. The litigants were the buyer and seller of a public utility, the facts of the litigation were lengthy and involved, but briefly, the buyer had paid the seller full purchase price, taken possession of and operated the utility, and about two years later it was first discovered that permission for the sale was not obtained from the Railroad Commission as the law required, and the seller in bad faith and in the fraud of buyer's right sought to take advantage of this omission, and the court held that under the facts he was estopped from questioning the buyer's title to the property and enjoined him from interfering therewith. The case involved fraud, estoppel and other issues wholly foreign to the pending case and its rationale fails to support petitioner's contention.

In conflict with petitioner's contention is the doctrine announced in a later California case, *Slater v. Shell Oil Company* (1940), 39 C.A. 2, 103 Pac. (2d) 1043, from which we quote (at p. 1050):

It is to be noted that this provision [Sec. 51(a)] declares every transfer without consent of the Railroad Commission is void. That the section means what it plainly states, that a purported transfer in violation of the statute confers no rights on the transferee, and that

third persons may raise this defense, is clearly established by the following cases: Webster Mfg. Co. v. Byrnes, 207 Cal. 630, 280 Cal. 101; Crum v. Mt. Shasta Power Corp., 220 Cal. 295, 30 P. 2d 30; Napa Valley E. Co. v. Calistoga E. Co., 38 Cal. App. 477, 176 P. 699.

We do not agree with petitioner that the recital contained in the engineer's report to the Railroad Commission in 1943, that the bus lines had been operated as a partnership since June 1, 1942, is of any probative value here in determining the effective date of the sale. This was merely an [105] opinion not binding here. Furthermore, the only question then involved before the Commission was the determination of rates to be charged by the partnership, which was then unquestionably the operating owner.

Not only the law of California prevented the consummation of the sale until it was authorized by the Commission, but likewise the contract of sale and the resolution of the corporation authorizing same both expressly stipulated that it was made "subject to the approval of the Railroad Commission"; the contract of sale further stated that "in the event said approval is not forthcoming this agreement will be null and void and of no effect." Accordingly, the sale could not be completed either under the law of California or the contract of the parties until approval by the Railroad Commission was had, and profits earned prior thereto in the bus lines operation belonged to peti-

tioner corporation and is taxable to it. See *Lucas v. North Texas Lumber Company* (1930), 281 U. S. 11; *Michigan Steel Corporation of New Jersey* (1938), 38 B.T.A. 435; *Albert E. Dyke* (1946), 6 T. C. 1134; *Portland Furniture Mfg. Co.*, B.T.A. 878.

Petitioner's final contention is that the income for the period in dispute cannot be taxed to petitioner corporation because such income was paid to and received by the partnership under a claim of right without restriction as to its disposition, and cites *North American Oil Consolidated v. Burnet*, 286 U. S. 417, and *Commissioner v. Wilcox*, 327 U. S. 404.

This is a novel and we believe an unwarranted application of the well established claim of right theory. The cases cited and all others invoking the rule, so far as we are aware, as respondent points out, are those where the litigant taxpayer receives income without restriction pending settlement of a dispute as to ownership, or where a taxpayer receives illegal income as [106] to which no dispute has been raised, but the taxpayer contends that lack of clear title prevents imposition of taxes thereon by the government.

Such is not the case here, for under the facts we hold that the possession, if any, by the partnership, of the bus line, its properties or profits during the period in question, was held by the partnership as

agent of petitioner corporation which remained the lawful owner of same until September 15, 1942.

The Commissioner did not err, and accordingly, Decisions will be entered for respondent. [107]

The Tax Court of the United States
Washington

Docket No. 11043

HARRY V. SOANES,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Opinion, promulgated January 23, 1948, it is

Ordered and Decided: That there is a liability on the part of this petitioner as transferee of the assets of the Vallejo Bus Company, for declared value excess-profits tax and excess profits tax for the year 1942 in the respective amounts of \$3,074.94 and \$27,721.76, together with interest thereon as provided by law.

Entered Jan. 27, 1948.

[Seal] /s/ LUTHER A. JOHNSON,
Judge. [108]

The Tax Court of the United States
Washington

Docket No. 11044

FRANK O. BELL,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Opinion, promulgated January 23, 1948, it is

Ordered and Decided: That there is a liability on the part of this petitioner as transferee of the assets of the Vallejo Bus Company, for declared value excess-profits tax and excess profits tax for the year 1942 in the respective amounts of \$3,074.94 and \$27,721.76, together with interest thereon as provided by law.

Entered Jan. 27, 1948.

[Seal] /s/ LUTHER A. JOHNSON,
Judge. [109]

The Tax Court of the United States
Washington

Docket No. 11045

LUTHER E. GIBSON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Opinion, promulgated January 23, 1948, it is

Ordered and Decided: That there is a liability on the part of this petitioner as transferee of the assets of the Vallejo Bus Company, for declared value excess-profits tax and excess profits tax for the year 1942 in the respective amounts of \$3,074.94 and \$27,721.76, together with interest thereon as provided by law.

Entered Jan. 27, 1948.

[Seal] /s/ LUTHER A. JOHNSON,

Judge. [110]

The Tax Court of the United States
Washington

Docket No. 11046

THE VALLEJO BUS COMPANY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Opinion, promulgated January 23, 1948, it is

Ordered and Decided: That there is a deficiency of \$3,074.94 in declared value excess-profits tax and a deficiency of \$27,721.76 in excess profits tax for the year 1942.

Entered Jan. 27, 1948.

[Seal] /s/ LUTHER A. JOHNSON,
Judge. [111]

[Title of Tax Court and Cause.]

PETITION FOR REVIEW

Vallejo Bus Company, petitioner in this cause, by Leon de Fremery and Clarence E. Musto, counsel, hereby files its petition for a review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision by The Tax Court of

the United States rendered on January 27, 1948, 10 T. C. (No. 17), determining that there is a deficiency in petitioner's declared-value-excess profits tax for the calendar year 1942 in the amount of \$3,074.94 and a deficiency in petitioner's excess profits tax for the calendar year 1942 in the amount of \$27,721.76.

I.

Petitioner is a dissolved California corporation, the principal office of which was located in the City of Vallejo, California. Petitioner filed its Federal income and excess profits tax returns for the year 1942 with the Collector of Internal Revenue for the First District of California. [127]

II.

The nature of the controversy, set forth briefly, is as follows:

Prior to June 1, 1942, petitioner operated a public utility subject to the jurisdiction of the Railroad Commission of the State of California. Petitioner entered into an agreement, effective June 1, 1942, to sell and transfer its business to a partnership composed of its stockholders, subject to the approval of said Railroad Commission. The sale and transfer was made on June 1, 1942, and the properties were operated by the partnership on and after June 1, 1942. Petitioner duly filed its Federal income and excess profits tax returns for the calendar year 1942 and did not include in the gross income reported thereon the revenues from said business earned on and after June 1, 1942. Said

partnership filed its Federal income tax return for the period June 1, 1942, to December 31, 1942, and included in the gross income reported thereon the revenues from said business for the period June 1, 1942, to December 31, 1942. Respondent herein has determined that the income from the business from June 1, 1942, to September 15, 1942, must be included in the gross income of petitioner and taxed to it solely because said Railroad Commission failed to issue its order approving said sale and transfer until September 15, 1942. The decision of The Tax Court of the United States decided said controversy in favor of respondent. Petitioner desires to obtain a review of said decision by the United States [128] Circuit Court of Appeals for the Ninth Circuit.

/s/ LEON DE FREMERY,
/s/ CLARENCE E. MUSTO,
Attorneys for Petitioner.

[Endorsed]: Filed April 26, 1948. [129]

[Title of Tax Court and Cause.]

NOTICE OF FILING PETITION FOR RE-
VIEW AND PROOF OF PERSONAL SERV-
ICE THEREOF

To Charles Oliphant, Chief Counsel, Bureau of
Internal Revenue, Washington, D. C.:

You Are Hereby Notified that petitioner, on the
26th day of April, 1948, filed with the Clerk of The

Tax Court of the United States at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision of The Tax Court of the United States rendered on January 27, 1948, in the above-entitled cause. A copy of the petition for review as filed is attached hereto and served upon you.

Dated at San Francisco, California, this 19th day of April, 1948.

Respectfully,

/s/ LEON DE FREMERY,

/s/ CLARENCE E. MUSTO,

Counsel for Petitioners. [130]

Personal service of the foregoing notice, together with a copy of the petition for review is hereby acknowledged this 27th day of April, 1948.

/s/ CHARLES OLIPHANT, CAR

Chief Counsel, Bureau of Internal Revenue.

[Endorsed]: Filed April 27, 1948. [131]

[Title of Tax Court and Cause.]

STATEMENT OF POINTS RELIED UPON

Vallejo Bus Company, petitioner in this cause, by Leon de Fremery and Clarence E. Musto, counsel, hereby sets forth the following statement of points relied upon by petitioner on review of this cause by the United States Circuit Court of Appeals for the Ninth Circuit:

1. The Tax Court of the United States erred in deciding that the sale and transfer of petitioner's business was ineffective between the parties thereto, under the law of the State of California, until the Railroad Commission of the State of California issued its order on September 15, 1942.

2. The Tax Court of the United States erred in deciding that the sale and transfer of petitioner's business was ineffective, under the law of the State of California, to render the revenues of the business taxable to the partnership until the Railroad Commission of the State of California issued its order on September 15, 1942.

3. The Tax Court of the United States erred in deciding that the sale and transfer of petitioner's business was ineffective, [141] as between the parties thereto, under the terms and conditions of the contract of sale and under petitioner's resolution authorizing said contract, until approval by the Railroad Commission of the State of California was obtained on September 15, 1942.

4. The Tax Court of the United States erred in deciding that the sale and transfer of petitioner's business was ineffective, under the terms and conditions of the contract of sale and under petitioner's resolution authorizing said contract, to render the revenues of the business taxable to the partnership until approval by the Railroad Commission of the State of California was obtained on September 15, 1942.

5. The Tax Court of the United States erred

in failing to consider that the Railroad Commission of the State of California, in its decision dated March 23, 1943, fixing the rates to be charged by the partnership, found as a fact that the bus business had been operated as a partnership since June 1, 1942, and that in computing a fair rate of return said Railroad Commission took into consideration the return realized during the calendar year 1942, which return was computed by allowing as a deduction corporate income taxes for the period January 1, 1942, to May 31, 1942, and individual income taxes of the partners for the period June 1, 1942, to December 31, 1942, which individual taxes were computed on the assumption that the partners had no other source of income. In fixing said fair rate of return, said Railroad Commission considered facts contained in its own engineer's report, which report noted on its face that said Railroad Commission's order approving the sale and transfer of petitioner's bus business had not been issued by said [142] Railroad Commission until September 15, 1942.

6. The Tax Court of the United States erred in failing to decide that the receipt of income by the partnership from the operation of the bus business between June 1, 1942, and September 15, 1942, under a claim of right and without restriction as to its disposition, had the legal effect of making such income taxable to the partnership and hence not taxable to petitioner.

7. The Tax Court of the United States erred in deciding that possession of the income from the operation of the bus business for the period June 1, 1942, to September 15, 1942, by the partnership was possession by said partnership as agent of petitioner and that hence petitioner remained the lawful owner of the income until September 15, 1942.

/s/ LEON DE FREMERY,
/s/ CLARENCE E. MUSTO,
Attorneys for Petitioner.

ACKNOWLEDGMENT OF SERVICE

Personal service of a copy of the foregoing statement of points relied upon by petitioner is hereby acknowledged as having been made this 27th day of April, 1948.

/s/ CHARLES OLIPHANT, CAR
Chief Counsel, Bureau of Internal Revenue.

[Endorsed]: Filed April 27, 1948. [143]

The Tax Court of the United States
Washington

Docket No. 11046

VALLEJO BUS COMPANY (a dissolved California corporation),

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 11043

HARRY V. SOANES,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 11044

FRANK O. BELL,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 11045

LUTHER E. GIBSON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CERTIFICATE

I, Victor S. Mersch, Clerk of The Tax Court of the United States, do hereby certify that the fore-

going pages, 1 to 146, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 12th day of May, 1948.

[Seal] /s/ VICTOR S. MERSCH, EMT
Clerk, The Tax Court of the United States.

[Endorsed]: No. 11941. United States Circuit Court of Appeals for the Ninth Circuit. Harry V. Soanes, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Frank O. Bell, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Luther E. Gibson, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Vallejo Bus Company (a dissolved California Corporation), Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petitions to Review Decisions of The Tax Court of the United States.

Filed May 28, 1948.

 /s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

Docket No. 11941

HARRY V. SOANES,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

FRANK O. BELL,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

LUTHER E. GIBSON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

VALLEJO BUS COMPANY (a dissolved California corporation),

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

MOTION

Come now the petitioners in the above entitled cause, by their attorneys Leon de Fremery and Clarence E. Musto, and respectfully move that this

Court order that all four petitions for review be consolidated for hearing and that only those papers filed on behalf of petitioner Vallejo Bus Company and the decisions of the Tax Court in the Soanes, Bell and Gibson cases be printed as the transcript of record on these four petitions for review.

In support of this motion, petitioners respectfully show to the Court that petitioners and respondent, by their respective counsel, have entered into a stipulation, which is filed herewith, that petitioners Harry V. Soanes, Frank O. Bell and Luther E. Gibson are transferees of the assets of petitioner Vallejo Bus Company and the decision in their cases will be governed by the decision in the case of petitioner Vallejo Bus Company since the liability asserted against the transferees is the liability of petitioner Vallejo Bus Company.

Dated June .., 1948.

/s/ LEON DE FREMERY,
/s/ CLARENCE E. MUSTO,
Attorneys for Petitioners.

So Ordered:

/s/ FRANCIS A. GARRECHT,
United States Circuit Judge.

[Endorsed]: Filed July 12, 1948. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Causes.]

STATEMENT OF POINTS RELIED UPON
AND DESIGNATION OF RECORD

1. Petitioners above named hereby adopt the Statement of Points Relied Upon filed by petitioner Vallejo Bus Company with The Tax Court of the United States with its Petition for Review of this cause.

2. Petitioners hereby designate that only the following parts of the record be included in the printed transcript of this cause:

(a) Docket entries of all proceedings before the Tax Court of Vallejo Bus Company case;

(b) All pleadings of Vallejo Bus Company case;

(c) The complete stipulation of facts and exhibits attached thereto;

(d) The following excerpts from exhibits not attached to the stipulation of facts but received in evidence by the Tax Court at the hearing:

(1) Petitioners' "Exhibit 1" in its entirety;

(2) Excerpts from petitioners' "Exhibit 2":

The cover page addressed to Mr. Warren K. Brown and signed by Homer H. Grant; from page 1, the caption "Scope of Investigation" and the paragraph thereunder; from pages 3, 4 and 5, title and paragraphs 1 through 5 of section entitled "Development of Transit Company"; from page 10, title and paragraphs 1 and 2 of section entitled "Income Tax";

(e) Findings of fact and opinion of the Tax Court;

(f) Decisions of the Tax Court in Vallejo Bus Company case; and in the Soanes, Bell and Gibson cases;

(g) Petition for review of Vallejo Bus Company case;

(h) Notice of filing of petition for review and proof of personal service thereof of Vallejo Bus Company case;

(i) Statement of points relied upon of Vallejo Bus Company case;

(j) This statement of points relied upon and designation of record.

Said transcript to be prepared, certified and printed as required by law and the rules of the United States Circuit Court of Appeals for the Ninth Circuit.

Dated July 2, 1948.

/s/ LEON DE FREMERY,

/s/ CLARENCE E. MUSTO,

Attorneys for Petitioners.

ACKNOWLEDGMENT OF SERVICE

Personal service of a copy of the foregoing Statement of Points Relied Upon and Designation of Record is hereby acknowledged as having been made this 2nd day of July, 1948. Said Designation of Record is hereby agreed to.

/s/ THERON L. CAUDLE,

Assistant Attorney General,

Attorney for Respondent.

[Endorsed]: Filed July 12, 1948. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Causes.]

STIPULATION

It Is Hereby Stipulated and Agreed by and between the parties hereto, by their respective attorneys, as follows:

1. That the petitioners Harry V. Soanes, Frank O. Bell and Luther E. Gibson are transferees of the assets of the petitioner Vallejo Bus Company and as such are liable for such deficiencies of taxes of petitioner Vallejo Bus Company for the year 1942, together with interest thereon, as provided by law, as may be determined in this proceeding.

2. That the decision in the cases of petitioners Harry V. Soanes, Frank O. Bell and Luther E. Gibson will be governed by the decision of this Court in the companion and controlling case of petitioner Vallejo Bus Company now pending decision in this Court since the liability asserted against the transferees is the liability of petitioner Vallejo Bus Company.

3. That because of the reasons set out, and the agreements reached in paragraphs 1 and 2 herein:

(a) The statement of points relied upon on review by above named petitioner Vallejo Bus Company and filed with The Tax Court of the United States shall also apply to the other three above named petitioners, and the same is hereby adopted;

(b) Only one printed record shall be prepared in the United States Circuit Court of Appeals for

the Ninth Circuit, which shall be entitled in the names of all four petitioners, which record shall contain the complete transcript of record pertaining to above named petitioner Vallejo Bus Company as designated to the Clerk of said Circuit Court of Appeals; and also the decisions of the Tax Court in each of the Soanes, Bell and Gibson cases.

(c) The four cases be consolidated for briefing, argument, hearing and decision.

Dated July 2, 1948.

/s/ LEON DE FREMERY,

/s/ CLARENCE E. MUSTO,

Attorneys for Petitioners.

/s/ THERON L. CAUDLE,

Assistant Attorney General,

Attorney for Respondent.

So Ordered:

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United States Circuit Judge.

[Endorsed]: Filed July 12, 1948. Paul P. O'Brien, Clerk.

